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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re C.H., A Person Coming Under the Juvenile Court Law.	2d Juv. No. B207599 (Super. Ct. No. J066581) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. S. H. and C. H., Defendants and Appellants.	

The mother of one-year-old C. H., appeals from a May 2, 2008 order denying her petition to reinstate reunification services and terminating parental rights. (Welf. & Inst. Code, § 388, 366.26.)[1] C.H.'s maternal aunt, S. H. (aunt), appeals from a separate order denying a petition for change of placement. (§ 388.) We affirm.

Facts and Procedural History

C.H. was born 36 weeks premature and detained after testing positive for methamphetamine at birth. Mother had received no prenatal care and admitted drinking

[1] All statutory references are to the Welfare and Institutions Code.

tequila and smoking marijuana before the child's birth. Mother was homeless and had a significant history of substance abuse and mental health issues.

Ventura County Human Services Agency (HSA) filed a dependency petition alleging that mother was unable to provide for C.H.'s care and had left C.H. without provision for support. (§ 300, subds. (b) & (g).) At the April 25, 2007 detention hearing, the trial court placed C.H. in foster care and set the matter for a jurisdiction and disposition hearing.

Mother's mental condition deteriorated. On April 27, 2007, she was placed on a psychiatric hold (§ 5150) at Hillmont Psychiatric Center (Hillmont) suffering from an amphetamine-induced psychotic disorder with delusions, polysubstance dependency, and depressive disorder. After mother was released from Hillmont, she entered Casa Latina, a residential drug treatment program.

On May 16, 2007, the trial court sustained the dependency petition and ordered reunification services. Mother, however, had serious problems following her case plan and suffered from a mental disorder manifested by rambling thoughts, agitation, and paranoia. Casa Latina recommended a more supervised mental health program. On June 25, 2007, mother was expelled from the program because of behavioral problems and escorted off the premises by the police.

Mother moved several times and enrolled in a second program (Prototypes Women's Center) but was discharged for possession of drug paraphernalia. A therapist reported that mother displayed multiple personalities and that residents feared her. Mother was disruptive, refused to participate in group therapy sessions, and denied that she had a substance abuse problem. While at Prototypes, mother showered compulsively, wandered at night, missed meals, and inadvertently started a fire in a microwave in the middle of the night.

On August 30, 2007, mother was readmitted at Hillmont and treated for paranoid delusions, incoherent rambling, and psychosis with disassociation.

At the six month review hearing, the case worker and care provider reported that mother had great difficulty feeding and holding C.H. At a June 25, 2007 supervised visit, mother did not follow instructions, became agitated, and flipped the baby in the air. During subsequent visits, C.H. would not maintain eye contact and pushed mother away.

Doctor Lakshman Rasiah, mother's treating psychiatrist, testified that mother suffered from a schizoaffective disorder ("a major psychotic disorder"), depression, and 20 years of alcohol and substance abuse. Mother had prior hospitalizations for bipolar and schizoaffective disorders, depression, and mood disorders secondary to alcohol or substance abuse. The doctor opined that mother would have great difficulty following a treatment plan and that her symptoms could reoccur with stress. Doctor Rasiah stated: "If this were a healthy baby and [mother was] stable or had been stable for a year at least, then I would have some reassurance that this situation could be brought about to the benefit of . . . the mother and baby. In the absence of those particular factors, then . . . I'd have a fair amount of concern"

C.H. was a high risk, special needs baby, and being treated for tremors, seizures, respiratory problems, possible cerebral palsy, hip and leg problems, muscle spasms, esophageal reflux disorder, encephalopathy, and the residual effects of prenatal drug exposure. Although C.H. had a pre-asthma condition and was sensitive to cigarette smoke, mother showed up at scheduled visits smelling heavily of cigarette smoke. During the visits, mother had problems holding and feeding C.H. and was unable to bond with the baby. A case worker reported that C.H. would push mother away and "turn her head as far around as she could to look at [the] social worker."

The trial court found that mother had not made substantive progress on her case plan and there was no substantial probability mother and C.H. would reunify within the next six months if services were extended. On November 16, 2007, the court terminated reunification services and set the matter for a permanent placement hearing.

On April, 21, 2008, the eve of the section 366.26 hearing, aunt filed a section 388 petition for change of placement. The trial court denied the petition because there was no prima facie showing of change of circumstances or that it would be in the child's best interests to order a change of placement. (§ 388.)

Section 388 Petition to Reinstate Services

We review for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; see also *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1448-1449 [abuse of discretion standard on appeal].) On appeal, mother must affirmatively show that a modification would be in the child's best interests and there has been a genuine change of circumstances. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) "The denial of a section 388 petition rarely permits reversal as an abuse of discretion. [Citation.]" (*Id*., at pp. 685-686.)

In determining whether the modification would promote the child's best interests, a trial court must consider "the seriousness of the reason for the dependency and the reason the problem was not overcome; the relative strength of the parent-child and child-caretaker bonds and the length of time the child has been in the system; and the nature of the change in circumstances, the ease by which the change could be achieved, and the reason the change was not made sooner. [Citations.]" (*In re Aaliya R.* (2006) 136 Cal.App.4th 437, 446-447.)

After reunification services were terminated, mother enrolled in a substance abuse program, attended parenting classes, and sought mental health care. Although mother was earnest, her psychiatrist stated that medication compliance would be a major challenge and that it would take at least a year of stability before mother could parent a healthy baby.

As a special needs baby, C.H. requires focused parenting and a stable home. A nurse and social worker reported that mother does not understand C.H.'s needs and that C.H. avoids contact with mother. It is uncontroverted that C.H. is closely bonded to her foster parent who wants to adopt, that C.H. is doing well despite significant

medical and developmental problems, and that the foster parent is committed to provide a caring, nurturing home.

The trial court reasonably concluded that mother's willingness to seek treatment for mental health and substance abuse problems did not justify a resumption of reunification services. (See e.g., *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762-763.) Although section 388 provides an "escape mechanism" by which a parent can present new evidence before parental rights are terminated (*In re Marilyn H.* (1993) 5 Cal.4th. 295, 309), mother has failed to demonstrate that reinstatement of services would promote the best interests of the child. A section 388 petition that "alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

Aunt's Change of Placement Petition

Aunt argues that she has a constitutional right as a relative to have C.H. placed in her home. Aunt, however, has no standing to assert the claim absent a preexisting custodial relationship. (*Miller v. California* (9th Cir. 2004) 355 F.3d 1172, 1175-1176; *Osborne v. County of Riverside* (C.D. Cal., 2005) 385 Fed.Supp.2d 1048, 1053-1054.)

Although a section 388 petition should be liberally construed in favor of its sufficiency, the petition may be summarily denied where it fails to make a prima facie showing of change of circumstances and that it would be in the best interests of the child to modify an existing order. (Cal. Rules of Ct., rule 5.570(d); *In re Zachary G.* (1999) 77 Cal.App.4th 799. 808.) Here, the denial of petition satisfied both section 388 and due process principles. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461; *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

Aunt contends that her placement petition must be given preferential consideration pursuant to section 361.3 as a blood relative. Where reunification services

are terminated, a relative only has preference if she or he has been the minor's "caretaker." (§ 366.26, subd. (k); *In re Sarah S.* (1996) 43 Cal.App.4th 274, 284-285.) "The overriding concern of dependency proceedings . . . is not the interest of extended family members but the interest of the child. '[R]]egardlesss of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that placement with a relative be rejected.' [Citation.]" (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855.)

In *In re Jessica Z.* (1990) 225 Cal.App.3d 1089, the maternal grandmother sought placement at the 6-month review hearing but was not evaluated for family placement. (*Id*., at p. 1099.) The Court of Appeal held that when "a relative requests custody *while reunification efforts are still ongoing*, and before any substantial damage would be done to the child by a change in placement, we conclude section 361.3 mandates that the propriety of such a placement at least be assessed." (*Ibid*, emphasis added.)

Unlike *In re Jessica Z.*, aunt was asked about placement but was not prepared to care for C.H. At the May 16, 2007 jurisdiction and disposition hearing, aunt was warned not to delay making a placement request.[2]

At the six month review hearing, HSA reported that placement with aunt was not in C.H.'s best interests. Aunt lived out of the area, did not regularly visit, and had not developed a relationship with C.H. Nor did aunt appreciate the severity of the

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[2] At the April 24, 2007 detention hearing, the trial court advised aunt if she was seeking placement, "make sure you start filling out that information right away to get the process started."

At the jurisdiction and disposition hearing, HSA reported that aunt was more concerned about helping mother than caring for the baby. Aunt indicated that she would have to move to a more stable environment before she could take C.H. and "sees this an option somewhere down the line, in a few months." The trial court warned that it "may not be an option if mom does not do well and [C.H.] is in a stable placement . . . . I don't think anybody should expect that we're going to remove her from a good home simply because a relative now decides they now want placement of her. So I want[] everybody to be aware of that. If you want placement, you should seek it now."

baby's physical and developmental problems. Because of job demands, aunt would have to hire someone to care for the baby. The case worker was concerned that aunt would allow mother unsupervised access to the baby and that aunt "remains in some degree of denial about the mother's mental illness and ability to care for [C.H.]" A developmental specialist recommended that C.H. not be moved, and warned that a change of service providers would traumatize C.H. whose only perceived comfort was with the foster mother.

At the November 16, 2007 six-month review hearing, the trial court noted that aunt "has expressed an interest in placement, and I have no doubt that she desires that. However, I don't believe and I find that I don't have the evidence that would allow me to order a change in placement at this time when I have a very high-needs child that appears to have, if not daily, then pretty much every other day, very frequent needs for medical appointments and therapy appointments. As far as I can tell, [aunt] is employed. She works. And I just don't have any evidence right now that would show me that she would be able to meet those needs by being able to get this child to those various appointments."

Aunt's section 388 petition, which was filed five months later and stated no new evidence, did not require an evidentiary hearing. (See e.g., *In re Angel B., supra,* 97 Cal.App.4th at p. 461; *In re Zachary G., supra,* 77 Cal.App.4th at p. 806.) " '[S]pecific allegations describing the evidence constituting the proffered changed circumstances or new evidence' is required. [Citation.]" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) Here the section 388 petition repeats arguments previously considered at the six month review hearing and shows that little has changed. Aunt has the same job and still lives out of the area, will not say whether she is ready to adopt, and disputes earlier reports about intermittent visits and her lack of knowledge of C.H.'s medical needs.

Conclusion

Although mother is sincere about seeking treatment for her mental health and substance abuse problems, the evidence clearly shows that she is unable to care for

C.H. and, in all likelihood, would not reunify with C.H. if services were extended another six months. The assertion that mother might be able to care for the child in the future does not alleviate C.H.'s need for a stable home now. "Childhood does not wait for the parent to become adequate. [Citation.]" (*In re Marilyn H., supra*, 5 Cal.4th at p. 310.)

Nor did the trial court err in denying aunt's section 388 petition. The petition does not show a change of circumstances or that a change of placement would be in C.H.'s best interests.

The judgment (orders denying section 388 petitions) are affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Tari L Cody, Judge

Superior Court County of Ventura

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Anthony J. Rista, for S.H., Appellant.

Anne E. Fragasso, under appointment by the Court of Appeal, for C.H., (mother), Appellant.